YEAP JOO KIM

v.

ONG CHOO EAN

HIGH COURT MALAYA, PULAU PINANG
ABDUL HAMID MOHAMAD J
[ORIGINATING MOTION NO: 25-75-98]
14 DECEMBER 1999

LAND LAW: *Caveat - Private caveat - Removal of private caveat by court - Application by beneficiary of estate comprising caveated land - Whether beneficiary an aggrieved person - National Land Code 1965, s. 327*

LAND LAW: *Caveat - Private caveat - Application to lodge - Particulars to be stated in Form 19B - Person claiming registerable interest in portion of land - Failure to state whether caveat is to bind land or particular interest - Grounds for claim to land or interest not stated in Form 19B but in statutory declaration attached thereto - Whether application to lodge defective and caveat void - National Land Code 1965, s. 323(2)*

LAND LAW: *Caveat - Private caveat - Removal of private caveat by court - Balance of convenience - One of four beneficiaries holding share in estate property on trust for caveator in exchange for granting of loan - Existence of caveat preventing transfer of land to beneficiaries - Whether balance of convenience lies in favour of removing caveat - Whether caveator only has contractual right in personam against beneficiary who took loan - Whether caveat ought to be removed*

This was an application to remove a caveat lodged by the defendant on a particular plot of land ('the land'). The plaintiff was one of four beneficiaries of the land which forms part of an estate while the defendant was the wife of another beneficiary. The defendant claimed that her husband had made an oral declaration that he would hold his share in the land on trust for her since she had loaned some money to him. On the strength of this declaration, the defendant lodged a caveat on the land some four years ago.

The plaintiff argued that Form 19B used by the defendant to lodge the caveat was defective because it did not comply with the requirements of s. 323(2) of the National Land Code 1965 ('the Code'). That section provides that the caveator must specify the nature of the claim on which the application to enter a caveat is based and it also must be expressly stated whether the caveat is to bind the land or a particular interest therein. It was in evidence that the

defendant did not state whether the caveat was to bind the land or a particular interest therein because no deletion was made to either of the two limbs. The plaintiff further argued that the grounds for the defendant's claim to the land or interest was not given in Form 19B used by the defendant as she had merely stated therein that her grounds for her claim to the land or interest are as stated in the attached statutory declaration.

Apart from the issues canvassed by the plaintiff, the court also had to determine whether the plaintiff had the *locus standi* to make this application, whether the defendant had a caveatable interest and whether the balance of convenience is in favour of removing the caveat.

Held:

[1] Whether the plaintiff has the *locus standi* to make this application depends on whether she is an "aggrieved person" as stated in s. 327 of the Code. The plaintiff is a beneficiary of the estate and not a beneficiary who is only entitled to a share of the general residue. Because of the existence of the caveat, the land cannot be transferred to the beneficiaries. Therefore, the plaintiff is an "aggrieved person".

[2] A person who claims a registerable interest in a portion of land may caveat the whole land provided that the caveat is expressly limited to protect only that claim. Further, that claim must be an interest recognised under the Code as being either registerable or entitled to protection. When applying for entry of a caveat, one should state one's interest in paragraph 1 of Form 19B and state the grounds of the claim to the land or interest in paragraph 2. The particular interest claimed and the effect of the caveat should also be described.

[2a] The defendant's husband is one of the beneficiaries of the estate and therefore only has a share in the estate. The defendant who claims to have obtained her interest in the estate from her husband, if at all, may only have an interest in part of the estate. Therefore, she should have clearly stated so in Form 19B. The failure to do so renders the entry of the caveat void and the caveat should, on that ground alone, be removed.

[2b] The fact that the grounds for the defendant's claim to the land or interest were not stated in paragraph 2 of Form 19B but in the attached statutory declaration does not render the application to lodge a caveat defective and the caveat void. However, it is advisable that the requirements of the form be followed.

[3] The defendant's husband, as a beneficiary of the estate, clearly has a caveatable interest in the land. If there is a trust as the defendant claims, then she also has a caveatable interest in the land. It is not for the court in these proceedings to make a finding of fact whether there is a trust or not. If there is a serious issue to be tried on the alleged claim, that should be sufficient. Assuming that there is a serious issue to be tried, the question of balance of convenience is to be considered.

[3a] On the one hand there is the wife of one of the beneficiaries saying that she received an oral declaration of trust in her favour from her husband of his share in the estate. On the strength of such a claim alone she lodged a caveat on the land. Four years after the date she lodged the caveat she still had not filed any suit against her husband or the estate regarding her alleged claim. On the other hand, because of the existence of her caveat, the beneficiaries are deprived of the transmission of their shares as legal owners. Even if she had loaned money to her husband and she caveated the property to secure her loan, the caveat should not be allowed to remain because it has nothing to do with the land. She has a contractual right in personam against her husband. Therefore, the balance of convenience is in favour of removing the caveat.

[Application allowed.]

Case(s) referred to:
Chor Phaik Har v. Farlim Properties Sdn Bhd [1994] 4 CLJ 285 ***(foll)***
Khoo Teng Seong v. Khoo Teng Peng [1990] 2 CLJ 233 ***(refd)***
Malayan Banking Bhd v. Chuah Chok Kiang [1997] 5 MLJ 778 ***(refd)***
Tan Heng Poh v. Tan Boon Thong [1992] 3 CLJ 1340 ***(refd)***
Wu Shu Chen & Anor v. Raja Zainal Abidin Raja Hussain [1997] 3 CLJ 854 ***(refd)***

Legislation referred to:
National Land Code 1965, ss. 323(2), (3), 327

For the applicant - Ramsun Ho Chii Huey; M/s See, Ramsun & Tan
For the respondent - Teja Singh Penesar; M/s Teja Singh Penesar & Co

Reported by S Dharmendran

JUDGMENT

Abdul Hamid Mohamad J:

This is an application by the plaintiff to remove the caveat entered by the defendant on the land known as lot 2576 and 2579, Section 1, North East District, Penang on 9 September 1995.

The plaintiff is one of the beneficiaries of the said land, which forms part of the estate of Khoo Sian Ewe (deceased). The defendant (caveator) is the wife of another beneficiary, Yeap Tuan Aun. There are four beneficiaries altogether. She entered the caveat because she claimed that her husband had made an oral declaration to her that he would hold the said land as trustee for her and that she had came to know that New Bob Realty Sdn. Bhd. had claimed to have bought the said land.

The first question to be considered is whether the plaintiff has the *locus standi* to make this application. The plaintiff is one of the beneficiaries of the estate, just as the husband of the defendant. It appears that the dispute is between the beneficiaries and the wife of one of the beneficiaries, so the trustees decided to stand by and wait for the results.

The question whether the plaintiff, as a beneficiary, has *locus standi* to make this application depends on whether she is an "aggrieved person" or not – s. 327 NLC.

In *Wu Shu Chen (The executive of the estate of Goh Kang How, deceased) & Anor v. Raja Zainal Abidin bin Raja Hussain* [1997] 3 CLJ 854; [1997] 2 MLJ 487, Mokhtar Sidin, JCA said, at p. 499: that an aggrieved person is a person whose legal right or interest is adversely affected by the wrongful act or conduct of another person or body. "The category of aggrieved person is never closed." It should be noted that the applicant in that case was a *bona fide* purchaser for valuable consideration. It was held that he was entitled to make the application.

In *Malayan Banking Berhad v. Chuah Chok Kiang* [1997] 5 MLJ 778, the plaintiff who was an assignee was held to be an "aggrieved person". Low Hop Bing J, in his judgment said:

> A "person aggrieved" under section 327(1) has been decided by our courts as someone who has suffered a legal grievance; a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something, or wrongfully affected his title to something or that in law something wrongful has been done to him that affects his title to the property: see *Punca Klasik Sdn. Bhd. v. Abdul Aziz bin Abdul Hamid & Ors* [1994] 1 MLJ 136, or any person whose legitimate rights or interests in the caveated land would be affected or who would suffer loss if the caveat in question is not removed: see *RAP Nathan v. Haji Abdul Rahman bin Haji Yusoff & Ors* [1980] 1 MLJ 248. More recently, Mokhtar Sidin JCA, in *Wu Shu Chen & Anor v. Raja Zainal Abidin bin Raja Hussin* [1997] 2 MLJ 487 at para 499 said that: "an aggrieved person is ... a person whose legal right or interest is adversely affected by the wrongful act or conduct of another person or body. The category of aggrieved persons is never closed".

In that case, so long as the caveat was not removed, the plaintiff would remain as an "unregistered chargee". It was therefore held to be an "aggrieved body".

In the present case the plaintiff, as a beneficiary, has instructed the solicitors of the trustees of the estate to transfer the said lands to her and the other beneficiaries. However, because of the existence of the caveat the transfer could not be made. The caveat has to be removed first. I am of the view that the plaintiff is an "aggrieved person".

In *Khoo Teng Seong v. Khoo Teng Peng* [1990] 2 CLJ 233; [1990] 3 MLJ 37, Lim Beng Choon J held that a trustee of property held in trust as well as a beneficiary of any trust property is entitled to enter a caveat pursuant to para (b) of s. 323(1) of the NLC 1965. But a beneficiary, who is only entitled to a share of the general residue of an estate, has no right to enter a caveat against the property of the estate when no part of the property of the estate has been expressly or impliedly devised and bequeathed under a trust created for his benefit. A beneficiary in order to be a person entitled under the said provision of the Code must show that he is a person entitled to or beneficially interested in the land held under the trust for him.

The plaintiff in this case is a beneficiary of the estate, not a beneficiary who is only entitled to a share of the general residue. If, following that case, he is entitled to enter a caveat, he should also by analogy be entitled to apply to remove a caveat, as an "aggrieved person".

Learned counsel for the plaintiff argued that Form 19B used by the defendant is defective, because it does not comply with the requirements of sub-ss. (2) and (3) of s. 323 of the National Land Code (NLC), namely, the caveator must not only specify the nature of the claim, but must also state expressly whether the caveat is to bind the land or a particular interest only. He referred to the cases of *Tan Heng Poh v. Tan Boon Thong* [1992] 3 CLJ 1340; [1992] 2 MLJ 1 and *Chor Phaik Har v. Farlim Properties Sdn. Bhd.* [1994] 4 CLJ 285; [1994] 3 MLJ 345.

The law is now clear that a person who claims a registerable interest in a portion of land may caveat the whole land, provided the caveat is expressly limited to protect only that claim, which must be an interest recognised under the Code as being either registerable or entitled to protection. Furthermore, when applying for entry of a caveat, one should state one's interest in para 1 of Form 19B and, in para 2 give the grounds of the claim. One should also describe in Form 19B the particular interest claimed and the effect of the caveat. That is confirmed by the Federal Court in *Chor Phaik Har*'s case.

It is to be noted that in this case, Form 19B used by the defendant does not state that the caveat is expressed to bind the land itself or the particular interest described in the schedule, because no deletion was made to either of the two limbs. We know that the defendant's husband is only one of the beneficiaries of the estate and therefore only has a share in the estate. The defendant, who claims to have obtained her interest in the estate from her husband, if at all, may only have an interest in part of the estate. Following *Chor Phaik Har*'s case, she should clearly state so in Form 19B.

Failure to do so renders the entry of the caveat void and should, on that ground alone, be removed.

The other point raised by learned counsel for the plaintiff is that no grounds for the defendant's claim was given. It should be noted that para 2 of Form 19B used by the defendant states:

> 2. Alasan-alasan tuntutan saya ke atas tanah/kepentingan itu ialah seperti dalam surat akuan.

I am of the view that the grounds should properly be stated in para 2 itself, even if briefly. However, I would not on the ground that the grounds are not stated in para 2 itself but in the attached statutory declaration alone hold that the application (Form 19B) is defective and the caveat void. But, I say that it is advisable that the requirement of the form be followed.

I shall now come to the more substantive issue. Does the defendant have a caveatable interest? The defendant's husband, as a beneficiary of the estate, clearly has a caveatable interest in the land. The defendant claims that as the wife of Yeap Tuan Aun she had received an oral declaration of trust to hold the said property in trust for her.

Of course, if there is a trust, then she should have a caveatable interest in the land. I am aware that it is not for the court to make a finding of fact whether there is a trust or not on affidavit evidence, in this proceeding. If there is a serious issue to be tried on the alleged claim, that should be sufficient.

In the statutory declaration dated 30 August 1995, all that the defendant said about her ground for wanting to lodge a caveat was that there was an oral declaration of trust by her husband to hold the land in trust for her. No particulars were given.

In her affidavit in reply, the defendant said that around 1989-1990 her husband bought four apartments for purpose of sale. He borrowed from banks. Still he did not have enough money to renovate the apartments. So, upon him making the oral declaration of trust she gave him loans and allowed him to use her overdraft facilities, all in all, totalling RM349,000. But her husband does not support her contention.

Even though I do not make a finding of fact whether such a trust exists or not, I cannot help but remark that the story is not quite probable. We do not know what she does that she has so much cash to lend her husband. If, as she herself said, the declaration of trust was the consideration for the loan, it is difficult to believe that she would be happy with an oral declaration of trust alone. When such a transaction happens between husband and wife, and the husband does not come forward to confirm it, whose evidence, besides the wife alone, can we expect to have to prove or disprove it?

The Torrens System was not introduced for no reason. It was to avoid the uncertainties such as this from haunting land administration. But unfortunately, after decades of its introduction, we still have such dealings as this "oral declaration of trust", "jual janji", "assignment", "bare trustee" and other principles of the English land law being applied, not only diluting the effect of the Torrens System but also complicating an otherwise simple system. However, let me make it clear I do not at this stage decide that there is no oral declaration. Assuming that there is a serious issue to tried, the question of balance of convenience is still to be considered.

On the one hand we have the wife of one of the beneficiaries saying that she had received an oral declaration of trust in her favour from her husband of his share in the estate. On the strength of such a claim alone she lodged a caveat on the land. Four years after the date she lodged the caveat she still had not filed any suit against her husband or the estate regarding her alleged claim. On the other hand, because of the existence of her caveat, the beneficiaries are deprived of the transmission of their shares as legal owners. If she indeed loaned money to her husband and she caveated the property to secure her loan, in that situation too, the caveat should not be allowed to remain: it has nothing to do with the land. She has a contractual right *in personam* against her husband.

In summary, I allowed the plaintiffs application, first because the caveat is defective in form. Secondly, even assuming that there is a serious issue to be tried that she has a caveatable interest in the land by virtue of the alleged oral declaration of trust (I seriously doubt it can be proved), the balance of convenience is in favour of removing it.

The application is allowed with costs.

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